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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. [redacted] 100

KOPPERS COMPANY, INC.,
Appellant,

v.

COMMONWEALTH OF PENNSYLVANIA,
Appellee.

Appeal from the Supreme Court of Pennsylvania

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS APPEAL.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 956

KOPPERS COMPANY, INC.,
Appellant,

v.

COMMONWEALTH OF PENNSYLVANIA,
Appellee.

Appeal from the Supreme Court of Pennsylvania

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS APPEAL.

In this appeal, appellant asserts that its rights under due process are violated by reason of the inherent arbitrariness of the make-up of the part of the Pennsylvania apportionment formula consisting of the gross receipts allocation fraction.

Appellee's Motion to Dismiss Appeal is not responsive to this issue. In the cases cited by Appellee (pages 6 and

7),[1] the selection of allocation criteria in the make-up of the state apportionment formula in each case was not attacked as being inherently arbitrary as is being done in the instant case. In the absence of such an attack and judicial determination on that point, those cases are not authorities approving the reasonableness of the Pennsylvania apportionment formula which is under attack in the present case.

Where appellant is attacking as inherently arbitrary the make-up of part of the Pennsylvania apportionment formula consisting of the gross receipts allocation fraction, it does not have the burden of proving, as claimed by appellee,[2] that the application to it of the *entire* apportionment formula produces an arbitrary and palpably disproportionate result. From what has been said by the Court in the *Butler Bros.* and *International Harvester* cases, its burden is limited to proof of arbitrariness which it submits has been met.[3]

The argument of appellee[4] that the use of three allocation fractions in an apportionment formula averages out and compensates for the disproportionate result produced by one or two of the fractions has no foundation in theory, fact or law; has not been sanctioned by this Court; and constitutes a device to tax extra-territorial values.

The Pennsylvania statute as construed by the state court is applied generally to all corporations similarly situated and, therefore, the issue of its inherent arbitrariness presents a substantial federal question.

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[1] *Butler Bros. v. McColgan*, 315 U. S. 501 (1942).
Underwood Typewriter Co. v. Chamberlain, 254 U. S. 113 (1920).
International Harvester Co. v. Evatt, 327 U. S. 416 (1947).
Turco Paint & Varnish Co. v. Kalodner, 320 Pa. 421, 184 A. 37 (1936).

[2] Motion to Dismiss Appeal, pages 6, 7 and 8.

[3] Jur. St., pp. 11-15, 17.

[4] Motion to Dismiss Appeal, p. 7.

Appellant's second issue involving discrimination against United States securities owned by it was raised and was decided adversely by the Pennsylvania Supreme Court [5] and, accordingly, is subject to review by this Court.

Wherefore, appellant prays that appellee's Motion to Dismiss Appeal should be denied; and that this Court should note jurisdiction to allow plenary consideration, with briefs on the merits and oral arguments.

Respectfully submitted,

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[5] Jur. St., p. 30.